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Applicant: Mittman Examiner: Yehdega
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Donna Miller Date: 12-22-04
Name

APPEAL BRIEF

TABLE OF CONTENTS

(1) REAL PARTY IN INTEREST	2
(2) RELATED APPEALS AND INTERFERENCES.....	3
(3) STATUS OF CLAIMS.....	4
(4) STATUS OF AMENDMENTS.....	5
(5) SUMMARY OF INVENTION.....	6
(6) ISSUES.....	10
(7) GROUPING OF CLAIMS	13
(8) ARGUMENT.....	14
(9) APPENDIX	20

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(1) REAL PARTY IN INTEREST

The real party in interest is Nami Media, Inc. of Venice, CA by virtue of an assignment from the inventors, dated August 2, 2001.

(2) RELATED APPEALS AND INTERFERENCES.

There are no related appeals or interferences.

(3) STATUS OF CLAIMS.

Claims 1-8 are pending but rejected. The Examiner's decision rejecting claims 1-8 is being appealed.

(4) STATUS OF AMENDMENTS.

No amendments were filed subsequent to final rejection.

(5) SUMMARY OF INVENTION.

An advertising media purchase **14** is provided. The media purchase **14** relates to a predetermined subject matter **18** and is placed in movies, video, television, interactive television, radio or print media within a stated geographic area **22**. The media purchase **14** includes either an Internet website address **26** or other unique trackable identifier for accessing further information related to the subject matter **18** of the media purchase **14**.

A first database **30** is provided. The first database **30** contains records **34** relating to the start date **38**, end date **42**, and stated geographic area **22** for a plurality of media purchases **14**. Means **46** are provided for inputting and maintaining records **34** in the first database **30**. Means **50** are provided for determining the geographic location **54** associated with an Internet Protocol address **58**. Means **62** are provided for grouping the geographic locations **54** into uniform stated geographic areas **22**.

A second database **66** is provided. The second database **66** contains records **70** correlating Internet Protocol addresses **58** of Internet users **74** with stated geographic areas **22**. Means **78** are provided for inputting and maintaining records **70** in the second database **66**. Means **82** are provided for determining the Internet Protocol address **58** of an Internet user **74** accessing the Internet website address **26**. Means **86** are provided for tracking the timing **90** of Internet-related goals **94** achieved by the Internet user **74** related to his accessing the Internet website address **26**. Means **98** are provided for accessing the second database **66** and assigning a stated geographic area **22** to the user's Internet-related goals **94**.

Means **102** are provided for inputting the timing **90** of occurrences of the Internet-related goals **94** and assigned stated geographic area **22** to the first database **30**. Means **108** are provided for correlating and reporting the timing **90** of Internet-related goals **94** achieved by the Internet user **74** with the start date **38**, end date **42** and a residual period **106** for media purchases **14** within

the stated geographic area **22**. The residual period **106** is defined as the period between the media purchase end date **42** and a predetermined residual date after which the achievement of Internet-related goals **94** will not be measured.

In a variant of the invention, a media purchase effectiveness report **110** is provided. The effectiveness report **110** includes a media type **114**, media name **118**, stated geographic area **22** of the media purchase **14**, start date **38**, end date **42**, summary of Internet traffic **122** originating in the stated geographic area **22** between the start **38** and end dates **42**, and summary of Internet-related goals **94** achieved for Internet users **74** located within the stated geographic area **22** between the start **38** and end **42** dates and during the residual period **106**. The media purchase effectiveness report **110** will permit a media buyer (not shown) to correlate volume of Internet traffic **122** and related goal **94** achievement resulting from a media purchase **14** in a stated geographic area **22**.

In another variant, the media effectiveness report **110** is compiled continuously from the start date **38** to the end date **42** of the media purchase **14** and for the residual period **106** and is made available through the Internet **128**, whereby a media buyer may evaluate the initial and residual Internet-related impact of any media purchase **14**.

In still another variant, the Internet-related goals **94** comprise sales **130**, downloads **134**, arrivals at specified web addresses **138**, user data capture **142**, sales lead generation **144**, identification of dealer locations **148**, viewing of specific text **152**, viewing of specific images **156** and receiving sound transmissions (not shown).

In a further variant of the invention, the means **108** for correlating and reporting the timing **90** of Internet-related goals **94** achieved by an Internet user **74** with the start date **38**, end date **42** and a residual period **106** for media purchases **14** within the stated geographic area **22** includes graphical representations **146** of media purchases **14** for specified periods **150** for stated

geographical areas **22**. It further includes graphical representations **154** of timed occurrences of media goals **94** achieved in the stated geographical areas **22**, and graphical representations **158** of the correlation of the timed occurrences of media goals **94** with the media purchase **14** periods for the areas **22**.

In another variant, the means **108** for correlating and reporting the timing of Internet-related goals **94** achieved by an Internet user **74** with the start date **38**, end date **42** and a residual period **106** for media purchases **14** within the stated geographic area **22** includes pattern recognition systems **162** for analyzing data yielding the graphical representations **146**, **154**, **158** to produce a media purchase decision **166**.

In still another variant, the means **108** for correlating and reporting the timing of Internet-related goals **94** achieved by an Internet user **74** with the start date **38**, end date **42** and a residual period **106** for media purchases **14** within the stated geographic area **22** includes baseline statistical reports **170** of media goals **94** achieved absent media purchases **14**, statistical reports **174** detailing media goals **94** achieved after media purchases **14**, and reports **178** comparing baseline statistics **170** to those resulting from media purchases **14** in stated geographical areas **22**. Such comparisons and predictions may also be shown in graphical form.

In yet another variant of the invention, the means **108** for correlating and reporting the timing of Internet-related goals **94** achieved by an Internet user **74** with the start date **38**, end date **42** and a residual period **106** for media purchases **14** within the stated geographic area **22** includes historical reports **182** detailing effectiveness of media purchases **14** in stated geographical areas **22**, and means **186** for comparing the historical reports **182** to current media goal achievement reports **190** to determine a differential effect of new media purchases **14**. Such comparisons are useful for predicting the effect of future media purchases **14**. Such comparisons and predictions may also be shown in graphical form.

Additional tabular reports, illustrating unique Internet user visits to an Internet web site, related sales and a percentage showing the conversion of the visits to sales for identified media purchasers, in stated geographic areas over various time periods, are also provided.

(6) ISSUES.**A. Response to Applicant's Arguments**

The Examiner was not persuaded by Applicant's arguments filed May 24, 2004.

The Examiner stated: "Applicant argument to the combination or motivation to combine of the prior art is noted. However the court ruled as follows in regard to obviousness and motivation to combine.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Applicant argues that the Benson system deals exclusively with a telecommunication environment and the instant invention being carried over the Internet. Further applicant states that the Benson system being limited in scope since the Benson system provides no way for media buyer of the system to measure the effectiveness of advertising media purchase in any

environment other than through a PSTN. That is correct however Benson teaches how to measure the effectiveness of media purchase by providing information that leads customer to the point of sale, by providing an 800 number and tracking the activity. Examiner took official notice that it would have been obvious to one of ordinary skill in the art to replace the 800 number by URL in order to lead customer to the point of sale, which is the web site. Further Examiner stated that it would have been obvious to determine the geographic location associated with the Internet protocol address which is analogous to Benson's determination of geographic location by cross-referencing caller's number and zip-code.

The following prior art are provided to support the official notice taken by the Examiner.

a) "Intel's Pentium II gets \$20 mil intro"; (Intel launching Pentium II microprocessor worldwide on 5/7/97, backed by a \$20 mil ad campaign), "Chip maker will use Web sites to test response to online, print ads" which teaches including a web address on printed media and banner ads and measuring each medium's effectiveness in driving traffic to the site.

b) "Draft helps put stamp of approval on campaign"; (Stamps.com launches a new advertising campaign that includes a direct mail piece and a direct response TV spot), which teaches including unique URL on TV promotion which allow tracking of response to the TV promotion.

c) "Marketing communication and the word wide web". (Opportunities of internet marketing described), which teaches well-known awareness generating techniques that includes placing the web site address in all advertising to generate a flow of surfers to the web site and calculating the awareness efficiency.

d) Gardner SR., US Pub. No. 2003/0023511 A1, which teaches tracking online activity to the advertising source which initially led a consumer to a given web address."

B. Claim Rejections -35 USC § 103

The Examiner finally rejected Claims 1-8 under 35 U.S.C. § 103(a) as being unpatentable over Benson U.S. Patent No. 6,470,079 and further in view of Cope U.S. Application Publication No. 2002/0046281.

The Examiner stated: “Regarding claims 1-8, Benson teaches advertising media purchase placed in either of movies, video, television, print, etc. within stated geographic area, tracking goals achieved, correlating and reporting the times of the goals achieved by customer... Benson teaches each media purchase including a unique directory number for accessing further information related to the subject matter of the media purchase. Benson teaches a database containing records correlating user geographic information, by cross-referencing caller’s number and zip-code (see col. 5 line 18 to col. 7 line 10 and col. 9 line 55 to col. 10 line 32). Benson teaches all claimed features except for the media purchase including a web address and correlating user protocol address to the geographic area and tracking the Internet related goals. Official Notice is taken that providing a web address on media purchase is old and well known in the art of marketing. One would be motivated to provide a web address on media purchase, instead of “800”, in order to direct the user to the point of sale (web site). Official Notice is taken that determining geographic location associated with an Internet Protocol address is old and well known in the art of WWW. One would be motivated to determine the geographic location of users in order to report demographic information of the respondents to the campaign, as taught by Benson. Cope teaches tracking web related goals and correlating and reporting the timing of Internet related goals (see page 2 par. 29 to page 5 par. 73). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Benson’s reporting of advertising campaign with Cope’s tracking of Internet related goals in order to evaluate the advertising effectiveness of the purchase media, as taught by Benson (see col. 1 line 65 to col. 2 line 55).”

(7) GROUPING OF CLAIMS.

One group of claims is under appeal.

(8) ARGUMENTS**A. Response to Applicant's Arguments**

The Examiner did not address all the arguments presented in the last Amendment. He addressed the proper legal standards for obviousness, re-stated that provision of an 800 number is equivalent to providing a URL, re-stated that it is obvious to determine the geographic location associated with an IP address, and provided some further prior art citations to support his official notice. But he did not address the Applicant's arguments that Benson is a telecommunications invention, is much more limited in scope than the instant invention, captures only call information, does not provide for any interaction with the consumer, cannot capture all the information captured in the instant invention, and that because Benson and Cope are in non-analogous fields, an obviousness rejection is improper.

In fact it is prima facie obvious that Internet-related goals cannot be achieved with a telephone system. Internet-related goals comprise sales, downloads, arrivals at specified web addresses, user data capture, sales lead generation, identification of dealer locations, viewing of specific text, viewing of specific images and receiving sound transmissions.

Further simply replacing an 800 number with a URL would not accomplish the objectives and would not even suggest all of the elements of the instant invention. Specifically, replacing an 800 number with a URL would not accomplish or suggest:

tracking the timing of Internet-related goals achieved by the Internet user related to his accessing the URL;

assigning a geographic area to the user's Internet-related goals;

inputting the timing of occurrences of the Internet-related goals and assigned geographic area to a database; and

correlating and reporting the timing of Internet-related goals achieved by the Internet user with the start date, end date plus a residual period for media purchases within the geographic area.

B. Claim Rejections -35 U.S.C. § 103

The Examiner has simply repeated the text of his last rejection. Therefore, the Applicant re-presents the arguments made traversing this last rejection.

Applicant points out that the system described as *Benson* is very different from the instant invention. First, the *Benson* system deals exclusively with a telecommunications environment, "...the invention provides a telecommunications environment configured to monitor information related to caller traffic responding to advertising campaigns." *Benson*, col.2, lines 2-5. Specifically, a consumer utilizes the telephone to call a specific directory number in response to an advertiser's advertising campaign. When the call is placed, an established telecommunications environment is necessary to allow the *Benson* system to function. At the core of the *Benson* system is the Public Switch Telephone Network ("PSTN"), which performs conventional telephone services and is utilized to obtain call information (i.e. directory number of the party placing the call, the directory number called, whether the call was connected, the duration of the call, etc.). On the contrary, each aspect of the instant invention is carried on over the Internet by both a consumer accessing the Internet website address to access further information related to the subject matter of the media purchase and a media buyer evaluating the effectiveness of the media purchase. The *Benson* system is much more limited in scope than the present invention since the *Benson* system provides no way for media buyers of the system to measure the effectiveness of advertising media purchases in any environment other than through a PSTN.

Second, as mentioned above, the calling information captured in *Benson* is solely limited to the call itself. The instant invention and *Benson* differ significantly in the type of information maintained. In the *Benson* system, no other data identifying the advertisement campaign is contained in the captured information except the directory number called by the consumer. Moreover, as previously mentioned above, the *Benson* system only captures call information

while the instant invention provides significantly more information about the advertising media purchase. Specifically, the first database of the instant invention contains records relating to the start date, end date, geographic area of the advertising media purchase, etc. This provides for a more informative report to be generated for a media buyer and greatly facilitates the analysis of the resulting data. Further, the instant invention provides a means for inputting and maintaining records in the first database resulting in a system that may be tailored to a media buyer's needs. The *Benson* system lacks such means and is restricted to the information captured via a connected telephone call.

Third, the *Benson* system does not provide for any interaction with the consumer. Since it only captures calling information associated with a consumer who places a call to a particular directory number, interaction with a consumer is limited, at best. In the instant invention, the consumer is provided with a website address through advertising delivered in a wide variety of media, namely television, movies, video, radio, interactive television and print media. The consumer is then able to use this website address to achieve a variety of Internet-related goals such as downloads, arrivals at specified web addresses, consumer data capture, sales lead generation, identification of dealer locations, viewing of specific text, viewing of specific images or receiving sound transmissions (see Claim 4 of the instant invention). The range of such goals provides much more detail about the consumer than does a simple phone call. Furthermore, the *Benson* system only monitors calling information related to the call. The instant invention provides an insight into the relative interest of the consumer. For example, the instant invention can show that a consumer had enough interest to visit the website but was not interested enough to make a purchase. Also, it can show whether the consumer was interested enough to view an online video or link to a related site but did not make a purchase. Moreover, the instant invention tracks the achievement of the Internet-related goals as a direct result of an advertising campaign. The *Benson* system lacks this function and is limited solely to the call information. All of this additional information, which can be provided through the present invention, represents a substantial improvement over the *Benson* system and thus patentable subject matter.

Fourth, the Examiner's conclusion that "determining geographic location associated with an Internet Protocol address is old and well known in the art of WWW." "One would be motivated to determine the geographic location of users in order to report demographic information of the respondents to the campaign, as taught by *Benson*" is traversed by the following rule:

"The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself."
In re Oetiker, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

As stated above, the *Benson* system relies solely on the PSTN, a conventional telephone system, to accomplish its stated goals. This certainly is non-analogous to the Internet system employed by the instant invention. Consequently, there is absolutely no reason, suggestion, or motivation found in *Benson* whereby a person of ordinary skill in the field of the invention would make the combination with determining geographic location associated with an Internet Protocol address.

Finally, the previously mentioned reporting aspects of the instant invention and the *Benson* system are significantly different. The report generated by the *Benson* system is limited to the data collected via the PSTN, specifically, the calling information. On the contrary, the report generated by the instant invention includes media type, media name, stated geographic area of the media purchase, start date, end date, summary of Internet traffic originating in the stated geographic area between the start and end dates, and summary of Internet-related goals achieved for Internet users located within the stated geographic area between the start and end dates and the residual period. Accordingly, a media buyer can correlate the foregoing information contained in a single report to efficiently determine the effectiveness of a particular advertising media purchase.

The *Cope* method is comprised of the following:

“[C]omparing requests, which are sent from a Web Browser to a Web server for access to resources within the Web site, with a set of redirecting criteria forwarding to a request tracker each request which matches the redirection criteria; and the request tracker determining a session identifier, logging the request together with the session identifier, logging the request together with the session identifier, and forwarding the request to the Web server for processing.

The method preferably also includes: for a set of resources on the Web server for which tracking is required, replacing original resource names with new resource names; and, for requests which match the redirection criteria and which include said original resource names, replacing the original resource names with the new names such that requests forwarded to the Web server by the request tracker include the new names for accessing the renamed resources.” (page 2 par. 29 to par. 30)

The instant invention is nothing like the *Cope* invention. The present invention lacks a set of redirecting criteria, request tracker and session identifier. It is these components which are key to the tracking abilities of the *Cope* invention. Accordingly, a combination of *Cope* with the *Benson* system is unrealistic.

“The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself.” *In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).

Here, the telecommunications monitoring system of *Benson* and the *Cope* system are certainly non-analogous sources as the former is a system for real-time reporting of advertising effectiveness and the latter is a request tracking for analysis of website navigation. They

cannot be combined to yield the present invention. As discussed above, the *Benson* system cannot be enhanced or even used in any manner in combination with the *Cope* system. Consequently, there is absolutely no reason, suggestion, or motivation found in either *Benson* or *Cope* whereby a person of ordinary skill in the field of the invention would make the combination.

In summary, as *Cope* cannot be combined with *Benson* to yield the present invention, the Applicant maintains that this rejection under 35 U.S.C. 103(a) is traversed.

C. Conclusion

Reversal of the Examiner's rejection and early allowance of this application are respectfully requested in view of the above presented arguments. A credit card authorization form for the \$250 fee is enclosed:

Respectfully submitted,



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(9) APPENDIX

Listing of claims involved in the appeal.

1. A media purchase goal correlation system, comprising:
 - an advertising media purchase, said media purchase relating to a predetermined subject matter and being placed in either of movies, video, television, interactive television, radio and print media within a stated geographic area;
 - said media purchase including an Internet website address for accessing further information related to the subject matter of the media purchase;
 - a first database, said first database containing records relating to the start date, end date, and stated geographic area for a plurality of media purchases;
 - means for inputting and maintaining records in said first database;
 - means for determining the geographic location associated with an Internet Protocol address;
 - means for grouping said geographic locations into uniform stated geographic areas;
 - a second database, said second database containing records correlating Internet Protocol addresses of Internet users with stated geographic areas;
 - means for inputting and maintaining records in said second database;
 - means for determining the Internet Protocol address of an Internet user accessing said Internet website address;

means for tracking the timing of Internet-related goals achieved by said Internet user related to his accessing said Internet website address;

means for accessing said second database and assigning a stated geographic area to said user's Internet-related goals;

means for inputting the timing of occurrences of said Internet-related goals and assigned stated geographic area to said first database; and

means for correlating and reporting the timing of Internet-related goals achieved by said Internet user with the start date, end date and a residual period for media purchases within said stated geographic area.

2. A media purchase goal correlation system as described in Claim 1, further comprising:
 - a media purchase effectiveness report, said effectiveness report comprising a media type, media name, stated geographic area of the media purchase, start date, end date, summary of Internet traffic originating in said stated geographic area between said start and end dates, and summary of Internet-related goals achieved for Internet users located within the stated geographic area between said start and end dates and during a residual period; and
 - whereby, said media purchase effectiveness report will permit a media buyer to correlate volume of Internet traffic and related goal achievement resulting from a media purchase in a stated geographic area.

3. A media purchase goal correlation system as described in Claim 2, wherein said media effectiveness report is compiled continuously from the start date to the end date of the media purchase and for the residual period and is made available through the Internet, whereby a media buyer may evaluate the initial and residual Internet-related impact of any media purchase.
4. A media purchase goal correlation system as described in Claim 1, wherein said Internet-related goals comprise sales, downloads, arrivals at specified web addresses, user data capture, sales lead generation, identification of dealer locations, viewing of specific text, viewing of specific images and receiving sound transmissions.
5. A media purchase goal correlation system as described in Claim 1, wherein the means for correlating and reporting the timing of Internet-related goals achieved by an Internet user with the start date, end date and a residual period for media purchases within said stated geographic area further comprises:
 - graphical representations of media purchases for specified periods for stated geographical areas;
 - graphical representations of timed occurrences of media goals achieved in said stated geographical areas; and
 - graphical representations of the correlation of said timed occurrences of media goals with said media purchase periods for said areas.

6. A media purchase goal correlation system as described in Claim 5, wherein the means for correlating and reporting the timing of Internet-related goals achieved by an Internet user with the start date, end date and a residual period for media purchases within said stated geographic area further comprises pattern recognition systems for analyzing data yielding said graphical representations to produce a media purchase decision.
7. A media purchase goal correlation system as described in Claim 1, wherein the means for correlating and reporting the timing of Internet-related goals achieved by an Internet user with the start date, end date and a residual period for media purchases within said stated geographic area further comprises:
 - baseline statistical reports of media goals achieved absent media purchases;
 - statistical reports detailing media goals achieved after media purchases; and
 - reports comparing baseline statistics to those resulting from media purchases in stated geographical areas.
8. A media purchase goal correlation system as described in Claim 1, wherein the means for correlating and reporting the timing of Internet-related goals achieved by an Internet user with the start date, end date and a residual period for media purchases within said stated geographic area further comprises:
 - historical reports detailing effectiveness of media purchases in stated geographical areas; and

means for comparing said historical reports to current media goal achievement reports to determine differential effect of new media purchases; and whereby, such comparisons are useful for predicting the effect of future media purchases.